

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KAELI GARNER, *et al.*,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware  
Corporation, and AMAZON.COM SERVICES  
LLC, a Delaware Limited Liability Company,

Defendants.

Case No. 2:21-cv-00750-RSL

**DEFENDANTS' REPLY TO PLAINTIFFS'  
OMNIBUS OPPOSITION TO MOTION  
TO SEAL**

NOTE ON MOTION CALENDAR:  
September 22, 2023

1 In support of its motions to seal certain exhibits (Dkts. 204, 205), Amazon offered a  
 2 particularized basis to seal each of the documents and portions of deposition testimony it seeks to  
 3 protect. Amazon explained that the sealed materials discuss planning for product features,  
 4 technical development issues and challenges, and confidential product development and marketing  
 5 plans—information the Protective Order specifically covers, and that would cause competitive  
 6 harm if disclosed. Under Ninth Circuit law, Plaintiffs must therefore present sufficiently  
 7 compelling reasons why the sealed materials should be released. Plaintiffs offer none. Instead,  
 8 they brazenly mischaracterize Amazon’s motions, claiming that Amazon relied solely on the fact  
 9 that it had designated the documents as confidential under the Protective Order in the first place.  
 10 That is obviously false. Amazon has met its initial burden, Plaintiffs have failed to meet theirs,  
 11 and the Court should grant Amazon’s Motions to Seal.

## 12 ARGUMENT

### 13 **I. Amazon Has Shown Good Cause to Seal the Exhibits and Testimony.**

14 In their Omnibus Response, Plaintiffs argue wrongly that Amazon provided no basis for  
 15 sealing the documents and redacted deposition testimony it seeks to protect. Plaintiffs claim that  
 16 “Amazon’s sole argument in support of its Motions to Seal is that it marked the information at  
 17 issue ‘confidential’ or ‘highly confidential’ under the Protective Order.” *See, e.g.*, Dkt. 214, Plfs.’  
 18 Omnibus Resp. to Defs.’ Mot. to Seal (“Opp.”) at 3. Plaintiffs further argue that “[a]part from the  
 19 existences of the Protective Order, Amazon provides no reasons whatsoever to prevent the  
 20 disclosure of the information described in its Motions to Seal.” *Id.* at 4. Plaintiffs are plainly  
 21 wrong.

22 In its sealing motions, Amazon did not claim that it had satisfied its initial burden solely  
 23 by designating the documents as CONFIDENTIAL or HIGHLY CONFIDENTIAL under the  
 24 Protective Order. Instead, Amazon explained that it designated the documents and testimony  
 25 *because they meet the criteria for doing so under the Protective Order* (Dkt. 81). For each exhibit,  
 26 Amazon explained specifically why the documents were, in fact, confidential, including the nature  
 27 of the sensitive, non-public information they contain. Dkt. 204, Defs.’ Mot. to Seal Exs. C-G  
 28 Attached to the Decl. of Melissa Lawton in Supp. Of Defs.’ Mot. for Prot. Order (“Mot. to Seal

#1”) at 3-4; Dkt. 205, Defs. Mot. to Seal Portions of Reply and Exs. In Supp. Of Same (“Mot. to Seal #2”) at 3-4. Thus, Amazon satisfied its initial burden under *Phillips ex rel. Ests. of Byrd v. Gen Motors Corp.* of establishing “good cause” to seal the materials on which it relied. 307 F.3d 1206, 1213 (9th Cir. 2002).

As Amazon described in its motions to seal (Dkts. 204, 205), the materials Amazon seeks to protect include internal communications and deposition testimony about planned privacy features, technical development challenges, and confidential product development and marketing plans. That is precisely the type of information that the parties stipulated, and the Court ordered, to keep confidential. For example, with respect to one of the internal communications at issue, Amazon explained that “[t]his sealed exhibit is an internal communication about the announcement of a new product feature....[it] reflects confidential business plans, including internal discussion about technical product development and the timing and reason for product feature announcements.” Dkt. 204, Mot. to Seal #1 at 4 (in support of sealing Melissa Lawton Declaration, Ex. F). Amazon provided similarly detailed bases for each exhibit it seeks to maintain under seal. *See* Dkt. 204, Mot. to Seal #1 at 3-4. Likewise, with respect to the redacted portions of a deposition transcript, Amazon explained that “this testimony is based, in part, on confidential documents produced in this litigation and reflects non-public information about product research, development, and design, including for an Alexa privacy feature.” Dkt. 205, Mot. to Seal #2 at 3 (in support of sealing Melissa Lawton Declaration, Ex. A).<sup>1</sup>

Thus, contrary to Plaintiffs’ claims, in accordance with the Protective Order, Amazon properly identified “the basis for sealing the specific confidential and/or highly confidential information at issue” and “include[d] this basis in its motion to seal.” *See* Protective Order at 7-8, ¶ 6.5. In compliance with the Court’s Local Rules, Amazon also took the less restrictive approach of redacting exhibits to minimize the number of documents to be sealed. *See* LCR 5(g)(1); LCR 5(g)(4). The public disclosure of such confidential, sensitive business information would plainly cause Amazon competitive harm, and there is “good cause” to seal them. *See Scherer v. FCA US*,

<sup>1</sup> While Amazon believes the confidential nature of the materials is clear, Amazon further offered to provide a declaration supporting the confidentiality of the exhibits if the Court determined that was necessary. Dkt. 204 at 4; Dkt. 205 at 4.

1 LLC, No. 20-CV-02009-AJB-BLM, 2022 WL 11381676, \*2 (S.D. Cal. Oct. 19, 2022) (finding  
 2 “good cause” to seal internal emails where “[p]ublic disclosure of FCA’s confidential business  
 3 material...software improvements could result in improper use by business competitors seeking to  
 4 replicate FCA business practices and circumvent the time and resources necessary in developing  
 5 their own practices and strategies.”); *Snap Lock Industries, Inc. v. Swisstrax Corp.*, No.  
 6 217CV02742RFBBNW, 2021 WL 3082561, \*3-4 (D. Nev. July 21, 2021) (finding “good cause”  
 7 to seal internal emails that reflect “marketing strategies”).

## 8 **II. Plaintiffs Have Not Offered Any Compelling Reasons Not To Seal The Exhibits.**

9 Plaintiffs offer no compelling reasons that the materials should not remain under seal.  
 10 Instead, they suggest that under *Phillips*, they should not have to. But *Phillips* held that “when a  
 11 party attaches a sealed discovery document to a nondispositive motion, the usual presumption of  
 12 the public’s right of access is rebutted, so that *the party seeking disclosure must present sufficiently*  
 13 *compelling reasons* why the sealed discovery document should be released.” *Phillips*, 307 F.3d at  
 14 1213 (emphasis added); *see* Opp. at 2, 3 n.1. That is because “[w]hen a court grants a protective  
 15 order for information produced during discovery, it already has determined that ‘good cause’ exists  
 16 to protect this information from being disclosed to the public by balancing the needs for discovery  
 17 against the need for confidentiality.” *Phillips*, 307 F.3d at 1213.

18 As described above, Amazon has met its initial burden of establishing good cause. The  
 19 materials were filed in connection with a non-dispositive motion,<sup>2</sup> and consistent with *Phillips*,  
 20 Amazon offered particularized reasons for sealing all or portions of them. Thus, under *Phillips*,  
 21 the burden shifts to Plaintiffs to offer “sufficiently compelling reasons” to unseal the documents.

22 On this point, Plaintiffs claim vaguely that some exhibits discuss Alexa features that are  
 23 publicly known. That argument grossly mischaracterizes the exhibits and Amazon’s bases for  
 24 sealing them. The exhibits do not merely mention the *existence* of product features; they reflect  
 25 internal discussions about technical limitations of features under certain conditions, challenges to  
 26 solving certain technical issues, customer usage statistics, how Amazon internally prioritized

27  
 28 <sup>2</sup> Notably, the Court did not cite or rely on any of these exhibits in ruling on the motion. *See* Dkt.  
 212, Order Denying Defs.’ Mot. for Prot. Order.



1 Dated: September 22, 2023

Respectfully submitted,

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**LCR 7(e) WORD-COUNT CERTIFICATION**

As required by Western District of Washington Local Civil Rules 7(e), I certify that this Reply Brief contains 1400 words.

Dated: September 22, 2023

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